IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 895 OF 2001 (M/S)
Old CMWP No. 5546 of 1999

1. Satnam Singh
2. Papendra Singh, Sons of Gurcharan Singh,
Both residents, of Uttam Nagar Kela Group,
Tehsil Baheri, District Barielly.

… **Petitioners.**

Versus

1. Harjendra Singh S/O Ratan Singh
2. Yaqoob Ali Khan, S/O Wajir Mohammad Khan,
3. Mejor Singh, Mukhtar-E-Aam,
All R/O village Pipalia, Tehsil Kichchha,
District Udham Singh Nagar.
4. The Assistant Consolidation Officer, Michchha, Udham Singh Nagar.
5. The Settlement Officer, Consolidation, Kichchha,
District Udham Singh Nagar.
6. The Additional District Magistrate (Nazul)/Deputy Director Of Consolidation, Udham Singh Nagar.

…. **Respondents.**

Dated 03-03-2006

Hon'ble B.S. Verma, J.

Heard Sri Sudhir Singh, learned counsel for the petitioners, Sri J.S. Virk, learned counsel for the respondent no.1 and Sri Nand Prasad learned counsel for the respondent nos. 4 to 7.

The writ petition has been filed by the petitioner for issue of writ or order or direction in the nature of certiorari for quashing the orders dated 28.8.1995, 17.4.1997 and 9.10.1998, passed by the respondent nos. 4, 5 and 6 respectively.

The main ground of challenge by the petitioner is that unless registered document executed by Yaqoob Ali Khan, respondent no.2 in favour of respondent no.3, entrusting him the management etc. including power of transfer regarding the land in question was cancelled by means of a registered instrument or

through a court of law, Yaqub Ali had no right to execute a sale deed in favour of respondent Harjendra Singh. Learned counsel for the petitioner further submitted that by means of a registered agreement dated 22.3.1991, Yaqub Ali Khan had agreed upon to transfer an area of 1.2140 hectare (2.99 acre) land out of plot no. 43 in favour of Gurcharan Singh, father of the petitioner and that sale deed had to be executed upto 30.6.1992. However, that sale deed was not executed by 30.6.1992. Furthermore, Sri Yaqub Ali Khan respondent no.2 extended the time of earlier agreement for further three years, i.e. upto 30-6-1995 by way of another agreement. It is not disputed that no suit for specific performance of contract was filed by the petitioner's father against Yakub Ali Khan. Yaqub Ali Khan had executed a sale deed in favour of respondent no.1 Harjendra Singh on 15-7-1995, area 0.0670 hectare and subsequently after transfer of the said land, the Power of Attorney holder of Yaqub Ali Khan had executed the sale deed in favour of the petitioner on 11.1.1996 of the area i.e. 2.99 acre including the area 0.6070 hectare which was already sold to respondent no. 1 Harjendra Singh on 15.7.1995 by Yakub Ali.

Sri Harjendra Singh had applied for mutation of his name on the basis of the sale deed before Assistant Consolidation Officer Kichchha. Assistant Consolidation Officer Kichchha under Section 12 of the Consolidation of Holdings Act passed the order of mutation on 28.8.95 in respect of land of Old Khata No. 43 new No. 60 measuring 0.6070 hectare thereby mutated the name of the petitioner on the basis of the sale deed. Aggrieved by the impugned order, an appeal no. 1598 was preferred under Section 11(1) of the Consolidation of Holdings Act against the order of Assistant Consolidation Officer Kichchha dated 18-9-1995 passed in Case No. 279 before the Settlement Officer Consolidation. The learned counsel for the petitioner has argued that he had purchased land of old Khasara No. 43 (new No. 60) total area 1.2140 hectare i.e. 2.99 acre. The said Appeal No. 1598 was dismissed by the S.O.C. vide

judgment and order dated 17-4-1997 on the ground that respondent no.1 Harjendra Singh had purchased the land of Gata No. 43, area 0.6070 hectare of Khasara No. 43 (new No. 60) from Sri Yaqub Ali prior to appellant.

Aggrieved by the impugned order dated 17.4.1997, the petitioner preferred a revision before the Deputy Director of Conslidation, which was registered as Revision No. 52/83 of 1996-97, and the same was also dismissed by the D.D.C. by the impugned order dated 9-10-1998. All the three impugned orders have been challenged by the petitioner before this Court.

The main controversy between the parties before the lower courts were (1) Whether the respondent no.1 had purchased the area 0.6070 hectare land of Khasara No. 43 (New No. 60) from Yaqub Ali Khan on 15-7-1995 through sale-deed (2) Whether the Attorney holder of Yaqub Ali1 was entitled to sell entire land of the same Khasara Number to the petitioner, which has been already sold by Yaqub Ali, respondent no. 1 Harjendra Singh on 15.7.95.

It is not disputed that total area of Khata No. 43 was 1.223 hectare i.e. 2.99 acre. Admittedly the sale deed was executed in favour of respondent no.1 prior to the sale deed in favour of the petitioner. It is well settled that the earlier sale deed shall prevail over the subsequent sale deed.

Earlier sale deed in favour of the respondent no. 1 was executed by tenure holder himself and admittedly on the date of transfer, Yaqub Ali was Bhumidhar of land and no suit for specific performance was filed by the petitioner’s father and subsequently, the petitioner purchased total area of Khasara No. 43 by the sale deed dated 11-1-1996 and the subsequent sale deed was executed by Major Singh the power of attorney holder of Yaqub Ali Khan in favour of the petitioner. The mutation order in favour of the

respondent no. 1 in respect of earlier sale deed land, which was sold by Yaqub Ali vide sale deed dated 15.7.1995 was validly passed.
The Trial Court did not commit any illegality in mutating the name of respondent no. 1 on the basis of the sale deed executed by Yaqub Ali.

The petitioner has also raised a ground before the Settlement Officer Consolidation that on the basis of the agreement in favour of his father, he was also entitled for mutation over the entire land and Yaqub Ali after executing power of attorney on 30-6-1992 was not entitled to transfer the land. The argument is misconceived. There is no legal bar. After executing a power of attorney, the original executant of the attorney (tenure holder) can also execute the sale deed in favour of any person without canceling it. Hence the mutation in favour of the respondent no.1 is legal and that cannot be set aside on this ground.

The power of Attorney holder of Yaqub Ali Khan Major Singh was only entitled to execute the sale deed of the remaining area and not whole of the area of the respective Khata which was sold to respondent no.1 Harjendra Singh by Yaqub Ali prior to the in favour of the petitioner.

The writ petition is devoid of merit.

The writ petition is hereby dismissed. No order as to costs.

(B.S. Verma, J.)

RCP